March 20, 2003

OVERVIEW

KEY ISSUE:

Ensure that the Commission's proposed regulatory classification does not undermine the ability of carriers to provide broadband Internet access services using unbundled network elements identified in the Triennial Review proceeding.

NEWSOUTH's SERVICES:

NewSouth provides integrated voice, data and high speed Internet access service to business customers using unbundled T-1 loops/EELs over TDM technology – facilities that the Triennial Review specifically preserved.

NewSouth also utilizes T-1 loops/EELs to provide a full 1.54 Mbps of data or broadband Internet access, over TDM technology.

NEWSOUTH's KEY ARGUMENTS:

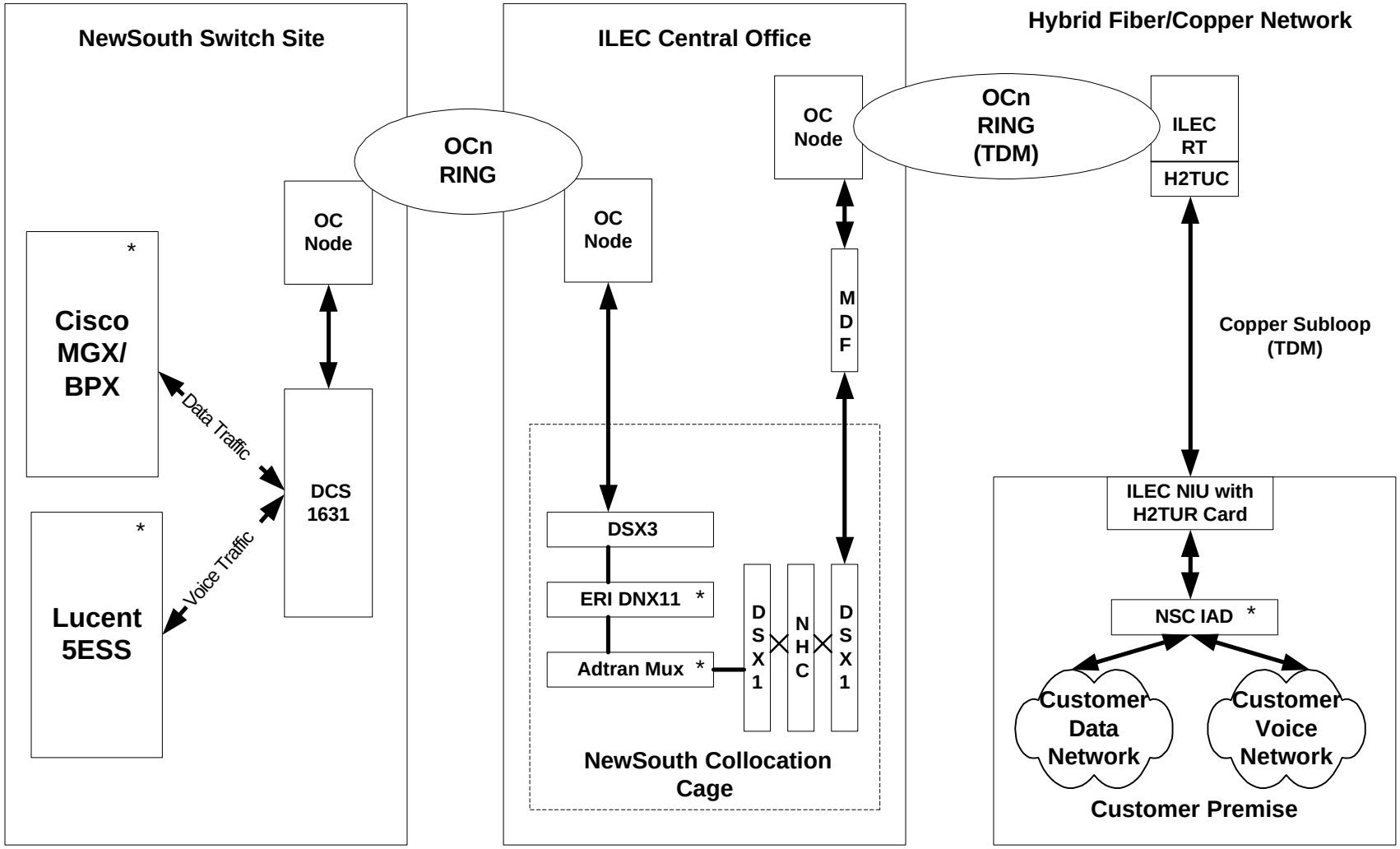
The record reflects broad consensus to continue exiting precedent that carriers may use UNEs to provide information service as long as they also provide a telecommunications service.

The services ILECs elect to provide over facilities is irrelevant to the question of whether those facilities qualify as network elements.

High speed transmission services provided by a carrier to an unaffiliated ISP, or to itself, to be used exclusively as an input to broadband wireline Internet access services should be considered telecommunications services because they are effectively available directly to the public.

NewSouth Broadband Services (Hybrid)

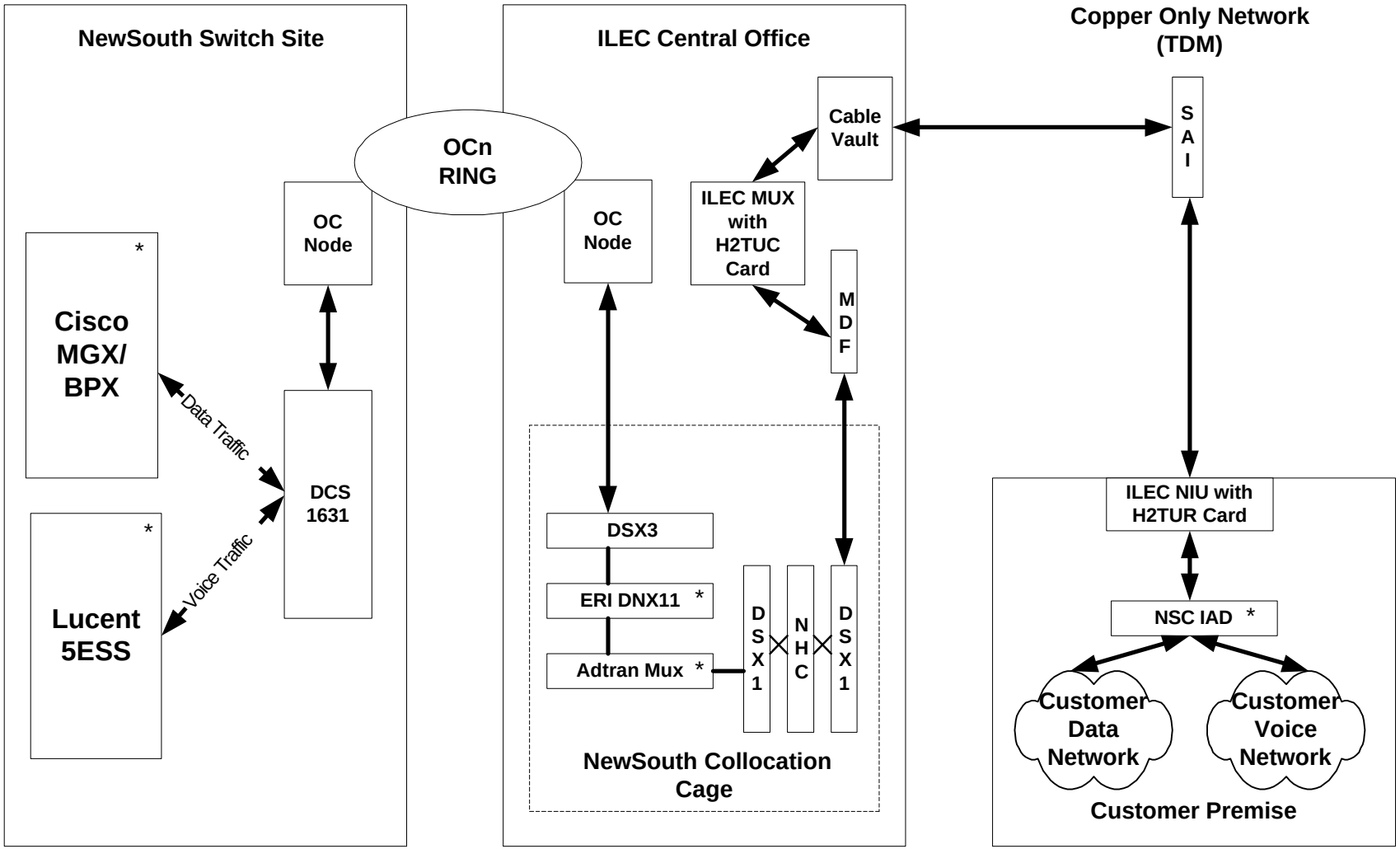
NewSouth offers high speed voice, Internet access and data services to its customers using non-channelized UNE DS1 Loops/EELs over TDM. All transmission protocols e.g. ATM, IP, etc. are generated through use of the equipment and technologies that NewSouth deploys at its switch sites, collocation spaces and customer's premises.



* Channelization functions are performed by the ERI while multiplexing, coding and framing for DS1s is perfomed by the Adtran. The IAD at the Customer Premise and the Cisco and Lucent switches generate the voice and data packets/streams that transit the TDM Network.

NewSouth Broadband Services (Copper)

NewSouth offers high speed voice, Internet access and data services to its customers using non-channelized UNE DS1 Loops/EELs over TDM. All transmission protocols e.g. ATM, IP, etc. are generated through use of the equipment and technologies that NewSouth deploys at its switch sites, collocation spaces and customer's premises.



* Channelization functions are performed by the ERI while multiplexing, coding and framing for DS1s is perfomed by the Adtran. The IAD at the Customer Premise and the Cisco and Lucent switches generate the voice and data packets/streams that transit the TDM Network.

TDM Transport of Broadband

Equipment Legend

NewSouth Switch Site

Cisco MGX/ BPX

The Cisco MGX/BPX performs the ATM and IP routing and switching functions in the NewSouth network. This is the heart of the NewSouth data network allowing us to provide packet switching and high speed data services to our customers.

Lucent 5ESS

The Lucent 5ESS is NewSouth's voice gateway. In combination with the Cisco MGX/BPX, the Lucent 5ESS enables NewSouth to provide integrated solutions to its customers over a single DS1 UNE/EEL Loop.

DCS 1631

The DCS is NewSouth's software configurable Digital Crossconnect System. NewSouth uses the DCS to separate data and voice channels for termination to either the Lucent 5ESS or the Cisco MGX/BPX.

OC Node

The Optical Node in NewSouth's Switch Site is our point of interface with the ILEC Network. High speed optical connection to the ILEC allows NewSouth to exchange traffic and provides the path for termination of our customer's facilities to our voice and data gateways.

ILEC Central Office

OC Node

The Optical Node at the ILEC Central Office is the point of interface with the NewSouth network.

MDF

The MDF, or Main Distribution Frame, is the metalic interface carrying signal between various pieces of equipment in the ILEC Central Office.

NewSouth Collocation Cage

DSX3

The DSX3 provides a hard-wired crossconnect to DS3/ STS1 signals from the ILEC OC Node.

ERI DNX11

The ERI DNX11 is an edge grooming device which allows efficient transport or data and voice separately. Performs channelization functions.

Adtran Mux

The Adtran performs muxing, framing and coding functions allowing NewSouth to break DS3/STS1 signals into DS1s.

NHC

The NHC provides remotely configurable "many-to-many" metallic crossconnect capability.

DSX1

The DSX1 provides a hard-wired crossconnect to the BellSouth Main Distribution Frame (MDF).

Public Network

OCn RING (TDM)

The ILEC employs Optical Carrier in the network as a means of efficient transport. High Speed Optical Signals are multiplexed using Time Division Multiplexing (TDM)

ILEC RT

The RT, or Remote Terminal, is used to convert High Speed Optical signals TDM DS1s and POTS lines for end user applications. The ILEC also places equipment in the RT that enables them to provision xDSL services.

Customer Premise

IAD

NewSouth uses an Integrated Access Device (IAD) at the customer premise to provision voice, data and broadband applications. This device can handle multiple protocols including IP, ATM, PPP, ISDN, Frame Relay and GR303.

Customer Data Network

NewSouth provides Video and Teleconferencing, Point to Point Voice and Data, VPN as well as Firewall and Security applications through its integrated platform.

Customer Voice Network

NewSouth also provides traditional voice applications including PBX, DID, DOD and combination voice trunking.

UNE ISSUES RAISED IN THE COMMISSION'S NOTICE

The Commission sought comment on the implication for the ILECs' 251(c)(3) unbundling obligation of its tentative conclusion that wireline broadband Internet access service is an information service without a telecommunications services component.

The Commission raised two questions:

1. "Because "network element" is defined as a "facility or equipment used in the provision of a telecommunications service," how could an incumbent LEC provider of wireline broadband Internet access service over its own facilities be required to provide access to those facilities as "network elements" if those facilities are used by the incumbent LEC exclusively to provide information services?"

2. "In addition, because Section 251(c)(3) allows a requesting carrier to request access to network elements "for the provision of a telecommunications service," would a provider be prohibited from using network elements pursuant to Section 251 to provide wireline broadband Internet access service?"

DEFINITION OF NETWORK ELEMENT TURNS ON WHETHER FACILITY IS CAPABLE OF BEING USED FOR A TELECOMMUNICATIONS SERVICE, NOT HOW ILEC USES THE FACILITY

- Network element definition does not depend on how ILECs use the facility; but rather whether the facility is capable of being used for a telecommunications service. The Commission reached this result in the *UNE Remand Order*, 15 FCC Rcd 3696, ¶ 329. See Qwest Comments at 10-11. ("Whether the ILEC *itself* uses a given type of facility for the provision of a 'telecommunications service," or exclusively instead for the provision of an 'information service,' the facility nonethelss can be a 'network element' so long as *the CLEC* seeks to 'use[]' it for the provision of a telecommunications service.") (emphasis in original).

CARRIERS CAN PROVIDE INTERNET ACCESS WITH UNEs WHEN ALSO PROVIDING A TELECOMMUNICATION SERVICE

Long-standing Commission precedent holds that requesting carriers can provide information services and telecommunications services over the same unbundled facilities. *Local Competition Order*, 11 FCC Rcd 15499, ¶ 995.

Broad consensus, including ILECs, to retain this precedent.

- BellSouth Comments at 18 ("Once the CLEC has access to the loop it could use it to provide telecommunications as well as information services").
- Qwest Comments at 11-12 (right to UNEs if used, at least in part, to provide telecommunications services).

THE COMMISSION ERRED IN TENTATIVELY CONCLUDING THAT THERE IS NO SEPARATE TELECOMMUNICATIONS SERVICE COMPONENT OF INTERNET ACCESS SERVICE.

- The Commission's "view" that end users obtain a single integrated offering not two separate services (*Notice* at ¶21) violates precedent. The Commission has previously held that broadband Internet access services consist of a telecommunications service (*e.g.*, a DSL-enabled transmission path) and an information service. *Advanced Services Order*, ¶ 36 ("[a]n end user may utilize a telecommunications service together with an information service, such as Internet access").

- Long line of Commission precedent holds that "advanced services" (*e.g.*, xDSL services) are "telecommunications services."

- When a carrier provides high speed transmission services to an unaffiliated ISP, it is viewed as providing a telecommunications service. There is no reason to change this outcome when the carrier provides the same transmission service to itself and in turn provides broadband Internet access service to end users. In either case, the carrier is providing telecommunications to a class of user (*e.g.*, ISP) "as to be effectively available directly to the public." The nature of the services does not change when a carrier bundles its own broadband transmission services with information services – the Commission has never applied a contamination theory to facilities-based carriers. (See, e.g., Frame Relay Order 10 FCC Rcd 13717 ¶ 42 (1995); Report to Congress, 13 FCC Rcd 11501, ¶ 60 (1998) ("[i]t is plain … that an incumbent local exchange carrier cannot escape Title II regulation of its residential local exchange service simply by packaging that service with (an information service such as voicemail.").

ILECs APPEAR TO AGREE THAT CLECS SHOULD HAVE ACCESS TO UNES TO PROVIDE BROADBAND INTERNET ACCESS SERVICE

- "[P]ermitting an ILEC to offer bulk DSL capacity to ISPs under case-by-case "private carriage" arrangements would not remove the underlying transmission facilities from the definition of 'network element' so long as they are '*capable of being used,*' by other carriers, in the provision of common-carrier telecommunications services. Nor would it preclude CLECs from obtaining those elements 'for the provision of a tele-communications' – *i.e.*, a common carrier transmission service – whether sold to ISPs or directly to the end users. Indeed, except as limited by the 'impairment' standard of section 251(d)(2), a CLEC could use those facilities to provide such services to its own ISP affiliate . . ." Qwest Reply at 19 (emphasis in original).
- SBC also appears to concede that CLECs can use UNEs to provide broadband Internet access service. SBC March 7, 2003 Ex Parte Presentation at 12 ("use of DS-1, DS-3 UNEs in CLEC/ISP arrangements, subject to granular review").
- If the Commission agrees with this principle, it must be clear in its order that its reclassification will not affect CLEC access to UNEs. Absent such clarity, ILECs may refuse to provide UNE access, as some have threatened to do in their comments.

NO REASONABLE POLICY JUSTIFICATION FOR DENYING REQUESTING CARRIERS ACCESS TO REMAINING UNES TO PROVIDE BROADBAND INTERNET ACCESS SERVICES

- ILECs have received broadband regulatory relief in the Triennial Review.
- Further regulatory relief for the *retail* provision of wireline broadband Internet access services can be provided without further deregulating ILECs' wholesale and unbundling obligations.
- Any further wholesale deregulation should be afforded through the forbearance provisions of section 10; not by trying to re-impose select Title II requirements under the guise of Title I ancillary jurisdiction.
- Maintaining intra-modal competition for broadband Internet access services serves the public interest by restraining prices and applying competitive pressure on the ILECs. Chairman Powell recognized as much:

  "[L]ine sharing has clear and measurable benefits for consumers. It has unquestionably given birth to important competitive broadband suppliers. That additional competition has directly contributed to lower prices for new broadband services." Separate Statement of Chairman Michael K. Powell at 1.

? Maintaining intra-model competition also preserves ISP options – even if ISPs cannot use the ILEC, they can use CLECs providing customer access via UNEs. This may be particularly critical if Commission relaxes computer inquiry rules.

- Denying CLECs access to UNEs to provide broadband Internet access service to business customer will seriously impede their ability to compete with ILEC bundled offerings.

- BOC claims that competition from other broadband providers, such as cable companies, eliminates need to provide unbundled access to transmission facilities ignores market distinctions.

    - virtually no cable or wireless broadband services for small to medium-size businesses.

    - extent of cable competition varies by geographic market

    - Cable Modem Order itself limited to only residential service